

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**In the Matter of
Skylink L.C.
Petition for Waiver of
Sections 54.307(c) and 54.802(a) of the
Commission's Rules.**

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) **CC Docket No. 96-45**
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PETITION FOR WAIVER

Skylink L.C., ("Skylink" or the "Company"); Study Area Code 359113, by its undersigned consultant, and pursuant to Section 1.3 of the Commission's rules, hereby requests a waiver of (1) the December 31, 2008, deadlines set forth in Section 54.307(c) for the filing of quarterly line counts for purposes of receiving high cost support; and (2) the December 31, 2008, deadline established by Section 54.802(a) for the filing of quarterly line counts for purposes of receiving Interstate Access Support ("IAS"). As further discussed below, Skylink is an eligible telecommunications carrier ("ETC") that serves rural customers in certain areas in Iowa. The company's USAC Service Provider ID is 143032762.

Good cause exists to grant the requested waiver because Skylink was undergoing an audit and implementing an entirely new accounting system which ultimately resulted in the filing not being processed as required to submit regulatory filings to USAC and the FCC. This failure to file caused Skylink to miss the Commission's quarterly line count submission deadlines on December 31, 2008.

In support hereof, Skylink states as follows:

A. BACKGROUND

Skylink L.C. is an Iowa limited liability company established in November 2001 with principal offices located at 844 Wood St. P.O. Box 186, Havelock, IA 50546. Skylink provides wireless

services in six (6) rural counties covering over thirty (30) rural communities and thirteen (13) incumbent local exchange carriers study areas in the state of Iowa. Skylink is designated as an ETC in Iowa by the Iowa Utilities Board. Skylink operates under five (5) licenses authorized by the FCC. Those license call signs are WQGL344, WPOM995, WPOM986, WPTJ816 and WPOM990. Skylink has invested over two (2) million dollars for facilities in its serving area.

As an ETC, Skylink is required to submit its quarterly line counts for purposes of receiving high cost support and IAS by the deadlines set forth in Sections 54.307(c) and 54.802(a), respectively of the Commission's rules. Specifically, quarterly line counts for high cost support are due by July 31st, September 30th, December 30th, and March 30th of each year, and Interstate Access Support quarterly line counts are due the last business day of June, September, December, and March of each year. It was recently determined Skylink missed filing the December 31, 2008 high cost support and the December 31, 2008 IAS filings. On July 1, 2009 Skylink became aware of its unfilled 525. Mr. Donald Miller, Vice President, was made aware of the missed filing when funds were not received for the appropriate months. Records were verified and it was confirmed that the filing which should have taken place prior to December 31, 2008 was not submitted. Upon further review it was determined the filing had been completed by its consultant and sent to Skylink for signature and verification via email, which was inadvertently not accomplished. During the period the filing should have been completed, Skylink was undergoing an end of year accounting audit which included the first review with a new accounting system and new accounting personnel. The implementing of new procedures and processes in the accounting system detracted from the process of completing and timely filing the form 525 for this period. Filings prior to this date and following this date have been completed in a timely manner. It is estimated Skylink would have received \$15, 000 combined universal service payment for high cost support and IAS.

Skylink L.C., hereby requests a waiver of the December 31, 2008 line count deadline which should have been filed prior to December 31, 2008. This waiver is required in order for the Universal Service Administration Company ("USAC") to accept the Company's December 31, 2009 filing of the June 30, 2008 Form 525 line count submission for high cost support and September 30, 2008 line count submission that will, in turn, permit Skylink to receive uninterrupted High Cost Loop support ("HCL") for the 2nd quarter of 2008 and Interstate Access Support ("IAS") for the entire July 1, 2008 through September 30, 2008 period. Skylink respectfully submits that good cause exists for a grant of this waiver. As explained herein, the missed end of December 31, 2008 line count submission deadline arose solely as a result of an inadvertent error. The company was undergoing an end of year audit and accounting conversion and failed to file in a timely fashion; the error went unnoticed until July 1, 2009. This inadvertent error should not, in Skylink's view, preclude it from receiving proper Federal Universal Service Fund ("USF") disbursements for which it would otherwise be eligible.

Thus, a grant of this request would ensure that Skylink receives proper levels of HCL and IAS disbursements, a result that is consistent with the underlying reasoning for disbursement of federal USF to entities in the first instance; the provision, maintenance and upgrading of facilities and services from which the USF is intended. The company understands that no contributing party would be harmed by this filing as Skylink's forecasted HCL and IAS disbursements have been included by USAC for federal USF sizing purposes.)

Skylink operates as a Competitive Eligible Telecommunications Carrier ("CETC") operating in rural Iowa. The company's USAC Service Provider ID is 143032762, and its Study Area Code is 359113. As of July 31, 2009, Skylink provides its CETC based wireless service to over 1,200 lines in its rural Iowa service area. Skylink has already made a substantial investment in facilities to provide wireless services in rural Iowa and has significant investment plans for the year 2009-2010. Said plans were

made with the understanding of what generally could be anticipated as its receipts of the federal Universal Service Fund ("USF").

B. Material and Substantial Compliance Efforts

The special circumstances supporting grant of the requested waiver begin with the material, substantial and timely efforts made by Skylink, once it identified its filing deficiency, to comply with all of the requirements and filings necessary to qualify for and receive funds for the period.

Skylink has complied fully and in a timely manner with the all filing requirements of the Commission's Rules since it became eligible in late 2001. Skylink has not missed any of these filing deadlines, and is currently up-to-date with respect to all of its data submission obligations for the 2009-2010 period.

To assure future compliance and timely filings, the Skylink Board of Directors has established a development session with the new accounting employees. The Vice President responsible for the area will be meeting with employees on March 17th to discuss managerial attributes that could be improved including organizational skills necessary within job responsibilities to adhere to regulatory requirements.

C. No Adverse Impact on USF Administration

USAC has received Skylink's relevant line counts in timely fashion before and since missing this filing for 2008. The filing delay should not affect the USF fund as it is a very small part of the total fund for USAC, but could cause significant harm to Skylink if it is prohibited from receiving the funds for this period. Hence, grant of Skylink's requested waiver will not adversely impact administration of the USF programs.

D. Adverse Impacts upon Investment, Local Rates and Jobs

In contrast, the loss of all or a significant portion of the approximately \$15,000 of high cost support and IAS to which Skylink would otherwise be entitled for the second half of 2008 period would be a severe blow to Skylink and its rural Iowa communities. That amount represents approximately nine (9) percent of Skylink's annual revenues. Revenue losses of this magnitude are extremely onerous and disruptive for small companies like Skylink, particularly when they are not accompanied by any offsetting loop or other cost reductions. Skylink will have no choice but to reduce its cash outlays, or increase its revenues from other sources, in order to offset such a substantial ICLS loss.

In the alternative, the loss of approximately \$15,000 of USF revenues will impair the ability of Skylink to invest in infrastructure additions and upgrades, thereby reducing the future services and service quality available to its rural member-customers. In addition to eliminating \$15,000 in potential cash reserves available for equipment purchases and down payments, the potential USF revenue loss will make it more difficult for Skylink to obtain infrastructure investment loans at reasonable interest rates by reducing the assets and financial ratios used by bankers to evaluate and price such loans.

Yet another alternative for offsetting a loss of \$15,000 of USF is to reduce operating expenses.

Whereas rural telephone companies take very seriously their responsibilities as significant employers in rural communities, it may not be possible for a small company like Skylink to weather a \$15,000 revenue loss without cutting jobs or salaries. In the very small rural communities in Skylink's service area, the loss or temporary lay-off of even one of the companies jobs can cause significant disruptions and hardships.

E. Excessive and Onerous Penalty

Penalties and forfeitures are not favored by the law, and should be enforced only when they are within both the spirit and letter of the law. *United States v. One Ford Coach*, 307 U.S. 219, 226

(1939). In determining whether penalties and fines are excessive, courts have examined whether they are "so disproportionate to the offense as to shock public sentiment" or "contrary to the judgment of reasonable people concerning what is proper under the circumstances." *Hindt v. State*, 421 A.2d 1325, 1333 (Del. 1980).

The imposition of an effective penalty of approximately \$15,000 upon Skylink for an unanticipated filing delay due to unique circumstances would be wholly disproportionate to the alleged "offense" and would be deemed "excessive" in the judgment of virtually all reasonable people.

F. REQUEST FOR WAIVER

Skylink understands very well the extreme importance of timely data and certification filings by **all** ETCs, and regrets its' USAC Fourth Quarter 2008 delinquent receipt of its 525 line count filing. **As** explained proceeding, Skylink did not allow for the careful monitoring of its filing obligation. Skylink now understands it should send future reports allowing for any exceptions affecting delivery of its filing and will send future filings with additional time allowed and will send in a manner which provides for verification of timely receipt.

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant of a waiver would be in the public interest, or in view of unique or unusual factual circumstances of the instant case, application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

(ii) Skylink takes no issue with the reasonableness of the Commission's rules requiring timely data submissions by ILECs, and recognizes the importance of compliance with these rules. Skylink contends the purpose of these rules, however, is to ensure the Commission and USAC are able to properly project, collect, and distribute all universal service mechanisms in a timely and accurate manner. Given USAC requested the information from Skylink and recommended Skylink file this petition for waiver, and Skylink has already submitted the Line Counts to USAC, the lateness should not have unduly hindered USAC's administrative functions. Because Skylink took action upon identification of its delinquent filing, Skylink contends an interruption of its USF support for an entire quarter would frustrate the purpose of the USF rules, and would not serve the public interest. Skylink has been approved for ETC status by the Iowa Utilities Board (IUB) and proper use of the support provided has been certified by Skylink with the Commission, USAC, and the IUB. While denial of projected support during the fourth quarters of 2008 due to a filing error, an error acted on upon discovery, it would not be in the public interest for the reason stated above, Skylink feels it has shown good cause for waiver of this filing deadline under Section 1.3 of the Commission's rules, as well as justification for such a waiver at the Commission's discretion under Section 1.925(b)(3). The waiver would serve the public interest by allowing Skylink to receive high cost support and interstate access support for its ETC offering. Expedited action is requested so USAC may accept Skylink's Fourth Quarter 2008 line count filing as timely, allowing Skylink to receive USF support.

Skylink has taken the following steps to submit the missed filing. To avoid similar situations, the company has changed its practice so that beginning in 2009, the Company will maintain a list of when filings are due, and these dates will be placed on a company calendar and added to the Vice President, CFO, accountant and administrative secretary's calendars. The CFO and

accountant will both report to the Vice President that the filing has been completed and successfully received by the appropriate party prior to the specific Federal USF-related filing deadlines.

Skylink understands the importance of timely data submission by entities like itself. While the company fully accepts responsibility for their inadvertent error, strict application of this line count submission deadline would be contrary to public interest as it would negatively impact utilization of the anticipated distribution from the USF. Under these circumstances, Skylink respectfully submits that the waiver is reasonable and in the best interest of the public. Skylink also respectfully requests that the waiver be granted promptly. Absent such waiver, Skylink will struggle to fulfill the purpose of federal USF disbursements for the "provision, maintenance and upgrading of facilities and services from which the support is intended". Moreover, the company understands that no contributing party would be harmed by this filing as Skylink's forecasted HCL and IAS disbursements have been included by USAC for sizing purposes. Thus, there should be no significant impact on contributor obligations regarding the fund.

Conclusion

Good cause, as well as considerations of hardship, equity, and the effective implementation of the Commission's universal service policies, warrant grant of Skylink's requested waiver of the (1) the December 31, 2008, deadlines set forth in Section 54.307(c) for the filing of quarterly line counts for purposes of receiving high cost support; and (2) the December 31, 2008, deadline established by Section 54.802(a) for the filing of quarterly line counts for purposes of receiving Interstate Access Support ("IAS"). Whereas grant of the requested waiver will not disrupt or impair USAC's administration of high cost support fund and other universal service programs, but the potential loss or delayed receipt by Skylink of the approximately \$15,000 of USF to which it is otherwise entitled during the second half of 2008 would impose severe and unwarranted hardships upon its customers,

employees and investment plans and constitute an excessive and onerous penalty for an unanticipated and unique filing of its line count reports.

Accordingly, Skylink respectfully requests that the commission grant this request and direct USAC to accept the Company's December 31, 2008 line count submission as filed August 5, 2009.

Respectfully submitted,



Dated: August 10, 2009

Skylink Telephone Company, Inc.
BY

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Dated: August 5, 2009

Skylink L.C., CC Docket No. 96-45, August 5, 2009

DECLARATION

I, Donald D. Miller, hereby declare, under penalty of perjury, as follows:

- I. I am the Vice President of Skylink, L.C. ("Skylink").
- II. I have reviewed Skylink's Petition for Waiver of Section 54.307(c) and Section 54.802(a) of the Commission's Rules and declare that the factual statements and representations therein are true and correct to the best of my knowledge, information and belief.

Signature



Donald D. Miller

Skylink, L.C.

Vice President